IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

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WRIT PETITION No.10412 OF 2006

Between:

M/s.Sri Siddivinayaka Automobiles Pvt. Ltd,
Rep. by its Managing Director Mr.K.V.Babul Reddy.

..... PETITIONER

AND

Asst.Commissioner (CT) LTU,
Charminar Division, Hyderabad,
And another.

....RESPONDENTS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.10412 OF 2006

O R D E R
(Per Sri Justice J.Chelameswar)

The writ petition is filed with a prayer as follows:

> **"… Hon'ble Court may be pleased to issue an appropriate writ or order or direction more particularly in the nature of Writ of Mandamus declaring the action of the 1st respondent in passing the impugned penalty orders in Proceedings No.LTU/02/3/1980/2003-04/CST dt.22-4-2006 for the assessment year 2003-2004 under the CST Act as illegal, arbitrary, unjust without authority of law, contrary to the provisions of the Act, without jurisdiction and contrary to the principles of natural justice and set aside the same and pass …"**

The petitioner is a private limited company and a registered dealer under the APGST and CST Acts and also under the A.P. VAT Act, 2005 carrying on business of the purchase and sale of two wheeler and three wheeler automobiles. For the assessment year 2004-2005 the petitioner filed returns under the CST Act along with all the necessary documents disclosing nil turnover. Insofar as returns under APGST Act are concerned, the petitioner filed the appropriate returns and claimed to have paid the entire tax. While so, on 13.04.2005 the petitioner's business premises was inspected by the 2nd respondent

and basing on the inspection, the

2nd respondent proposed levy of tax under the CST Act on a turnover of Rs.2,93,83,928/- and issued a show cause notice accordingly.

The petitioner disputes its liability on the above mentioned turnover and filed its explanation to the show cause notice, which was rejected by the 2nd respondent by an order dated 16.12.2005 and he confirmed his initial proposal of treating the turnover referred to earlier as assessable to tax under CST Act and assessed the amount as such. Aggrieved by the same, the petitioner preferred an appeal before the Appellate Deputy Commissioner, CT, Panjagutta Division, Hyderabad, which is said to be pending.

While the matters stood thus, the 1st respondent issued a notice proposing to levy of penalty under Section 14(8) of the APGST Act by a show cause notice dated 16.12.2005 inviting objections. The petitioner filed its preliminary objections on 08.03.2006. The petitioner sought an opportunity of personal hearing. The 1st respondent, however, directed the petitioner to be present on 27.03.2006 for personal hearing through his notice dated 17.03.2006. The petitioner sought a further adjournment through its representation dated 27.03.2006 on the ground that the concerned Accounts Manager of the petitioner company was sick and his presence would be necessary for the petitioner to defend its case effectively. Without considering such a request, the

1st respondent passed an order dated 22.04.2006 imposing a penalty of three times the tax liability. Hence, the present writ petition.

Notice before admission was ordered on 24.05.2006. Learned Government Pleader took time to obtain instructions. Today when the matter is taken up, no counter is filed.

In the circumstances, we are of the opinion that there is a failure of natural justice in this case and the ends of justice would be met by

disposing of this writ petition at this stage by quashing the impugned order and remitting the matter back to the

1st respondent with a further direction to give an opportunity of hearing to the petitioner and pass appropriate orders after such hearing.

It is agreed that the petitioner would appear before

the 1st respondent on 10.07.2006 without any further notice from the 1st respondent and on such appearance of the petitioner, the

1st respondent shall hear the objections of the petitioner and pass appropriate orders in accordance with law.

With the above directions, the writ petition is disposed of.

JUSTICE J.CHELAMESWAR

JUSTICE D.APPA RAO

30TH JUNE, 2006

Note: Issue copy in two days.

(B/O) PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

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(Per Sri Justice J.Chelameswar)

30TH JUNE, 2006